

EXHIBIT A

** ROUGH DRAFT **

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

MISTY BLANCHETTE PORTER, MD,)
)
Plaintiff,)
v.) 2:17-CV-194
)
DARTMOUTH-HITCHCOCK MEDICAL)
CENTER, DARTMOUTH-HITCHCOCK) March 28, 2025
CLINIC, MARY HITCHCOCK MEMORIAL)
HOSPITAL, and)
DARTMOUTH-HITCHCOCK HEALTH,)
)
Defendants.)

BEFORE THE HONORABLE KEVIN DOYLE
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

For the Plaintiff:

ERIC JONES
GEOFFREY J. VITT
SARAH H. NUNAN

For the Defendants:

DONALD W. SCHROEDER
MORGAN McDONALD
TRISTRAM J. COFFIN

Jan-Marie Glaze, CCR, RPR, CRR Certified Court Reporter

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1 THE COURT: Yes.

2 (Bench conference.)

3 THE COURT: So when you say "admission,"
4 you're treating it like an exhibit that's in evidence.

5 MR. VITT: So I want to be able to obviously
6 show it to the jury.

7 THE COURT: Right, and the agreement is that
8 it can be shown to the jury as a demonstrative.

9 MR. VITT: And at the end, we'll figure out
10 whether it's --

11 MR. COFFIN: It specifically should be -- I
12 suggest our position would be, it needs to be made
13 clear to the jury that this is being shown to you for
14 illustrative or demonstrative purposes but it is not
15 admitted into evidence until it is. There's a
16 distinction there.

17 THE COURT: All right. So when you do that,
18 when you ask it to be put up, we'll make that statement
19 then.

20 MR. VITT: Close enough. I'll get to it.

21 (End of bench conference.)

22 Q (By Mr. Vitt) I believe that the agreement is that the
23 report, Exhibit 1-B, will be shown to you and it will
24 appear on the screens so the jury has a way to follow
25 your testimony, but it is not, at this time, being

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1 offered in evidence?

2 THE COURT: Yes. This exhibit, I'll instruct
3 the jury is meant to be illustrative. It is not in
4 evidence at this time.

5 MR. VITT: Thank you.

6 Q (By Mr. Vitt) What's the date, Dr. Bancroft, of the
7 most recent report that you prepared?

8 A March 19th of this year.

9 Q And is the -- what's been marked as Exhibit 1-B that
10 report?

11 A I assume so, I don't see a mark on this. Oh, I do now.

12 Q All right. So is this the most recently report you
13 prepared, correct?

14 A Yes.

15 Q And does it reflect your analysis of Dr. Porter's lost
16 earnings by reason of losing her employment at
17 Dartmouth-Hitchcock and then becoming employed at
18 UVMHC?

19 A Yes.

20 Q And the lost earnings are for what period of time?

21 A From year 2017 through -- I made projections through
22 the year 2033.

23 Q All right. You're not asserting that Dr. Porter would
24 necessarily work until she's 70, correct?

25 A That's correct, I'm not.

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1 Q But you simply provided, by year, what the losses would
2 be up to that age, correct?

3 A Yeah. That's correct. You can look at any particular
4 year, and there's a loss associated with it.

5 Q And how do you begin your analysis?

6 A Well, to begin my analysis, I have to get information.
7 The support that I get, biographical information, date
8 of birth, education level, and obviously in employment
9 cases, termination cases, I need a date of termination.
10 And then once I sort of understand the -- some of the
11 parameters of the case, I'm going to require additional
12 information regarding the employment that the person
13 was terminated from.

14 I need information regarding wages that the person
15 was receiving, and information on fringe benefits. I
16 need tax returns. And then if the person, as in this
17 case, they have found alternative employment, sometimes
18 that's not the case, but I do the same thing. I look
19 at what their salary is, or wages, and the fringe
20 benefits associated with it. And I didn't mention
21 income tax returns right up to present.

22 Q And did you receive from Dr. Porter the information you
23 described, the tax returns, W-2s, the information that
24 allowed you to calculate what she was earning at
25 Dartmouth-Hitchcock?

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1 A Yes.

2 Q And did you also receive that same information from
3 University of Vermont and University of Vermont Medical
4 Center?

5 A Yes. Dr. Porter provided that to me, yes.

6 Q Okay. Can you explain how you undertook your analysis
7 and reached your conclusions?

8 A Sure. As I mentioned, the -- if you will, kind of two
9 basic steps. First step is to estimate out what the
10 person what I believe is a reasonable estimate what the
11 person would have made if they had continued
12 employment. In this case, continued -- Dr. Porter had
13 continued her employment at Dartmouth-Hitchcock. And
14 then from that, I need to estimate out what --
15 actually, I'll have her actual earnings, and then going
16 forward, I've got to project out what she would likely
17 to make now that she's no longer there. Then I've got
18 to compare those two, and then there's several steps
19 before I get to what I would classify the present value
20 of the losses in any particular year. I can go through
21 those individual steps if you would like.

22 Q Yeah. If you can continue on the individual steps, I
23 would appreciate it.

24 A Yeah. Right. Looking at the chart, I think the first
25 column -- well, the first column is year. Second

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1 column is age. The first column that requires some
2 forecasting is under the Dartmouth-Hitchcock Medical
3 Center, and it's under the gross earned income. And
4 here, this is where I developed the projections of what
5 I believe are reasonable estimates of what I believe
6 Dr. Porter would've made if she continued to work at
7 Dartmouth-Hitchcock.

8 In developing those estimates, I looked at what
9 her past earnings were, what her current contract was,
10 and then there was a little -- 2017 was a bit unusual
11 because she was on disability for part of the year, so
12 I had to take that into account for 2017, but --

13 Q For 2017, did you include the amount she received in
14 disability payments when you're calculating the gross
15 income for the year?

16 A Yes, I did. But then starting in 2018, I just based on
17 what she would receive as a salary as a doctor at
18 Dartmouth-Hitchcock. In developing those forecasts, I
19 used -- in most years, I used -- I assumed that her
20 wages would grow at an annual rate of 2.5 percent.

21 Q Did you believe that was reasonable?

22 A Yeah. That's significantly below what the average
23 wages have grown. I don't care what -- any length of
24 period. If you use 10, 15, 20, 30 years, it's up in
25 the three to three and a half percent.

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1 Q So the number you chose was lower than historic data?

2 A Yes. Yes.

3 MR. COFFIN: Objection, Your Honor. This is
4 all totally leading, and I understand that he needs to
5 set the foundation, but the witness should be
6 testifying, not Attorney Vitt.

7 THE COURT: Okay. Sustained.

8 You'll have some leeway, Mr. Vitt. I understand
9 it's an expert witness.

10 Q (By Mr. Vitt) Will you continue, please? We were at
11 the 2018 -- you assumed an increase of 2.5 percent.

12 A Yes. I assumed -- for most years, I assumed an
13 increase of 2.5 percent. There were three exceptions
14 to that annual increase of 2.5. The first one was --
15 and I assumed the increases would happen in July of
16 each year; that's the fiscal year for Dartmouth and
17 that's when raises went into effect, in July.

18 I assumed that in the year July of 2018 that she
19 would receive a 5 percent salary increase because she
20 would be promoted to a full professor.

21 And then the other two exceptions were in the
22 years 2000 and 2021, I assumed no increase.

23 Q 2020 and 2021?

24 A 2020, and 2021.

25 Q Go ahead.

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1 A That there would be no increases, and that was based on
2 information that was provided by Defense saying that
3 there were no increases during those two years.

4 Q Those were the COVID years?

5 A Yes.

6 Q And so, essentially, Dartmouth-Hitchcock, the
7 representation was, that there would be no raises, and
8 we were prepared to accept that, right?

9 A I had -- yes. I accepted it, and I had no way to
10 verify it, so I accepted it.

11 Q And did you make an assumption about whether there
12 would be raises subsequent to the COVID years to
13 essentially make up for the two years of, you know, no
14 raises?

15 A No. I used the conservative two and a half percent,
16 you know, recognizing that, you know, when you can
17 forecast out into the future, you pick what you think
18 is a reasonable rate. You're not saying that every
19 single year would be exactly that rate, but on average,
20 over the forecasting period, that it would -- would be
21 what you're assuming. In this case, I'm assuming two
22 and a half percent which, again, I believe to be a very
23 conservative estimate of --

24 Q Just to be -- to recap it, for those two years, the
25 COVID years, 2020 and 2021, your report assumes no

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1 raise for Dr. Porter, right?

2 A That's correct, yes.

3 Q Okay. Continue, please.

4 A So anyway, I took her basically -- for 2018, I took her
5 salary that she had -- contracted salary in 2017 --
6 actually it went from July of 2017 through June of
7 2018, so I used that as the basis, and then I applied a
8 two and a half percent in 2018. 2019 I applied the
9 5 percent. Then no increases in '20 and '21, and then
10 after that, an increase of two and a half percent.
11 That's how I was able to develop that first column
12 there on the gross earned income under the
13 Dartmouth-Hitchcock Medical Center estimates.

14 Q So the June 2017 date was used because that's when she
15 ceased to be employed by Dartmouth-Hitchcock, correct?

16 A That's correct, yes.

17 Q Okay.

18 A The next column over is my estimate of the fringe
19 benefits that she would have received if she remained
20 employed at Dartmouth. Typically, there are three
21 fringe benefits that I'm generally interested in. One
22 is the employer's contributions Social Security, the
23 employer's contribution to health insurance, and the
24 employer's contribution to retirement.

25 In this particular case, I wasn't concerned about

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1 Social Security because that contribution only goes up
2 to about -- currently it's about \$150,000, so the
3 earnings were all over that, so there's no loss on that
4 contribution that Dartmouth would have made to Social
5 Security, because there's a similar contribution being
6 made at UVM.

7 Q So because the contribution was equal, there's no loss,
8 correct?

9 A Correct. It washes so it was excluded from my
10 estimates at Dartmouth and also when I get to the UVM,
11 it was excluded from the UVM fringe benefits.

12 And then the next one was I looked at was medical
13 insurance. And medical insurance, the only years that
14 I put Dartmouth's contribution to medical insurance was
15 the six months or so of 2018 after she was let go, and
16 then for, I think, it was through April of 2018,
17 because after April, she got a position at UVM where
18 she got medical insurance. So, again, going forward
19 from May of 2018, the value of Dartmouth's medical
20 insurance was equivalent to the value of the UVM
21 contribution of medical insurance, so it's a complete
22 wash.

23 Q All right.

24 A So it's not included in there.

25 Q All right.

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1 A The other factor that is included in there is
2 Dartmouth's contribution to retirement which, based on
3 my analysis, is equivalent to about 12 percent of her
4 earned income. And in her case, she was actually able
5 to be grandfathered in. She has what is called --
6 referred to as a defined benefit package. That is
7 it's -- not many of those around anymore; State of
8 Vermont has one -- where your retirement is based on
9 the average of three to five years, your number of
10 years of creditable service, and then some percentage.
11 And she was able to be grandfathered into that.
12 Dartmouth, at that time, in that 2017 period, was
13 moving to a defined contribution where she would put in
14 an X amount of money every year into an account.

15 Q What I'm hearing you say is that Dr. Porter qualified
16 for a defined benefit plan at Dartmouth-Hitchcock,
17 right?

18 A Yes, she did.

19 Q And if she had remained at Dartmouth-Hitchcock, she
20 would have been eligible to receive the payments under
21 that plan, correct?

22 A Yes.

23 Q And did you calculate -- I realize it's not reflected
24 in the report, but did you calculate what would have
25 been the payment to her yearly if she retired when she

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1 was 65 under the terms of that plan?

2 A I did at 65. I did it for several years.

3 Q All right.

4 A I looked at if she retired at 65. I actually looked at
5 it earlier. There's a reduction in your benefits if
6 you retire before 65.

7 MR. COFFIN: Objection, Your Honor. If we
8 could approach, please?

9 THE COURT: Yes.

10 (Bench conference.)

11 MR. COFFIN: The fact that she would lose a
12 pension is nothing that was raised in the report. And,
13 in fact, our evidence is that she is going to get a
14 pension. She would get a pension that is somewhat
15 smaller than if she had stayed at Dartmouth but
16 prorated, based on her contributions and her years
17 there. So for him to -- if you would, please. For him
18 to, at the very last minute, offer all these changes in
19 this report that this is a new undisclosed expert
20 opinion is improper.

21 THE COURT: Go ahead.

22 MR. VITT: This was simply predicate for to
23 get Dr. Bancroft to say, essentially, that the
24 calculation in that report reflects the damages. We
25 are not asking for any more. It was simply an example

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1 of why there is -- in the report, there is an analysis
2 that reflects the loss of the retirement benefit. It's
3 already in there. It's baked into those numbers, so
4 I'm not saying that there's an additional loss. It's
5 simply saying, okay, what would she have received,
6 having calculated that it is reflected in the report.

7 MR. COFFIN: It is not spelled out as such in
8 the report so it's completely opaque. It should have
9 been noticed early. And, in addition, I think it's
10 untrue.

11 MR. VITT: Okay. Well, you took his
12 deposition. You had an opportunity to call an expert
13 witness if you wanted to put somebody on who was going
14 to prepare a report to say that. You were entitled to
15 do that. We think the report is accurate. You can
16 cross-examine him on it, but this is not something that
17 we hid or tried to sneak in.

18 MR. COFFIN: It's an undisclosed expert
19 opinion. I don't know what your motives were, but it
20 was not disclosed.

21 THE COURT: It's not this is something that
22 was in the assumptions is that your --

23 MR. COFFIN: Yes.

24 MR. VITT: He has described how he calculated
25 it. This amount is in there. It is already baked into